



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 30, 1993

Ms. Cathy Cunningham  
Senior Assistant City Attorney  
City of Irving  
P.O. Box 152288  
Irving, Texas 75015-2288

OR93-732

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 21861.

The City of Irving (the "city") received an open records request for its records pertaining to a particular mobile home fire that resulted in two deaths. You state that the city has released to the requestor, who is the owner of the mobile home, certain of the records. You contend that because the fire was caused by a six-year-old child, the remaining records are made confidential under section 51.14 of the Family Code and thus must be withheld pursuant to section 552.101 (former section 3(a)(1)) of the Open Records Act. Section 552.101 of the act protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Title 3 of the Family Code, which contains Chapter 51, relates to delinquent children and children in need of supervision. Section 51.14 of the Family Code, dealing with juvenile records, provides in pertinent part:

(c) Except as provided in this subsection, law-enforcement files and records concerning a *child* shall be kept separate from files and

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<sup>1</sup>We note that the Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

records of arrests of adults and shall be maintained on a local basis only and not sent to a central state or federal depository. . . .

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a *child* is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public . . . . [Emphasis added.]

Section 51.02 of the Family Code provides that:

In this title:

(1) " Child" means a person who is:

(A) *ten years of age or older* and under 17 years of age . . . .  
[Emphasis added.]

We note that the child identified in the records at issue is younger than ten years of age, and thus does not come within the definition of "child" for purposes of section 51.14. Further, you do not indicate, nor do the records at issue reflect, that the Irving Police Department will charge this child with "delinquent conduct" or "conduct indicating a need for supervision" as those terms are defined in section 51.03 of the Family Code. Consequently, section 51.14 does not apply to the records in question.

You also contend that some information contained in these records is confidential under the Texas Medical Practice Act, V.T.C.S. article 4495b, which provides in pertinent part:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician *that are created or maintained by a physician* are confidential and privileged and may not be disclosed except as provided in this section. [Emphasis added.]

V.T.C.S. article 4495b, § 5.08(b). You contend that "[t]o the extent that medical information is contained within these records which may have been received from paramedics, the records would also be subject to the confidentiality provisions of the Medical Practices Act." The requested records were not created by a physician, nor does this office have any reason to believe that these records are currently being maintained by a physician as part of his or her patients' medical files. The confidentiality provision of article 4495b is clearly inapplicable here.

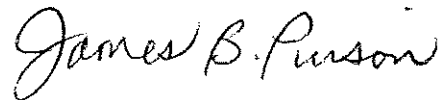
This does not, however, end our discussion of section 552.101. This section also protects the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus.*

*Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). A governmental body may withhold information under common-law privacy only if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

The fact that one's child caused a fire that resulted in death may be "embarrassing." However, to withhold the reports in question would effectively conceal pertinent information regarding the cause of the fire -- information of legitimate concern to the owners and insurers of the mobile home. This information does not meet the section 552.101 test for common-law privacy; the city must release the requested records in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



James B. Pinson  
Assistant Attorney General  
Open Government Section

JBP/RWP/rho

Ref.: ID# 21861  
ID# 21862

Enclosures: Submitted documents

cc: Mr. K.C. Hwang  
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(w/o enclosures)